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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

WESTERN STATES, INC., Plaintiff and Appellant, v. CITY OF LOS ANGELES, Defendant and Respondent.	B211253 (Los Angeles County Super. Ct. No. BS114526)
NORTH SEVENTH STREET ASSOCIATES, INC., et al., Plaintiffs and Appellants, v. CITY OF LOS ANGELES, Defendant and Respondent.	B211296 (Los Angeles County Super. Ct. No. BC386708)

APPEALS from judgments of the Superior Court of Los Angeles County, Soussan G. Bruguera and Conrad Richard Aragon, Judges. The appeal in B211253 dismissed. The judgment in B211296 affirmed.

Law Offices of Thomas A. Nitti and Thomas A. Nitti for Plaintiffs and Appellants.

Carmen A. Trutanich, City Attorney, Claudia McGee Henry, Assistant City Attorney, Gerald M. Sato and Mei-Mei Cheng, Deputy City Attorneys for Defendant and Respondent.

These consolidated appeals challenge the propriety of the administrative warrant procedure used by the City of Los Angeles (City) to inspect multi-unit residential rental properties for hazardous and dangerous conditions and other indicia of nonconformity with the City's housing ordinance. We dismiss the appeal of Western States, Inc. (Western States) as moot, because the issued warrants were either executed or have expired by operation of law. We affirm the judgment of dismissal as to North Seventh Street Associates (North Seventh Street) and David Sotelo (collectively, North Seventh Street plaintiffs).[1] Plaintiffs did not allege that any inspection warrants were issued nor that they could amend to so allege. Therefore no controversy ripe for judicial resolution exists.

BACKGROUND

On February 29, 2008, in Los Angeles Superior Court (LASC) No. BS114526, Western States and North Seventh Street filed an ex parte application to quash the inspection warrant dated February 22, 2008 for 233 North Avalon Boulevard, Los Angeles; to vacate two February 22, 2008 orders, which authorized execution of the warrant; and to quash the related January 31, 2008 inspection warrants which would allow the Los Angeles Housing Department (Housing Department) and the Los Angeles Police Department (police) to inspect, respectively, the premises at 1458 South Alvarado Terrace and those at 1422, 1444, 1446, 1448, 1450 South Alvarado Terrace for the purpose of abating hazardous and dangerous conditions.[2]

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[1] We have consolidated for briefing, oral argument and decision the appeal from the "judgment" (order) denying Western States' ex parte application to quash inspection warrants obtained by City (B211253) and the appeal from the "order" (judgment) of dismissal following the sustaining without leave to amend the demurrer to North Seventh Street's operative complaint (B211296). North Seventh Street Associates does not appeal from the "judgment" (order) denying the ex parte application to quash inspection warrants by Western States, Inc. to which it also was a party.

[2] The same ex parte application was filed on April 24, 2008. The record does not reflect any disposition of this application.

The trial court (J. Bruguera) on the same day granted the ex parte application to quash the inspection warrant as to 1458 South Alvarado Terrace and vacated the orders authorizing Housing Department and police access, respectively, to the premises at 1458 South Alvarado Terrace and the premises at 1444, 1446, 1448, and 1450 S. Alvarado Terrace; and ordered the hearing regarding the subject inspection warrants continued to March 5, 2008.[3]

On March 5, 2008, the trial court (J. Bruguera) denied the application to quash the warrants and authorized City to proceed with the inspection warrants regarding the South Alvarado Terrace properties. The court denied a stay for the reason that health and safety issues were involved. Neither Western States nor North Seventh Street filed an appeal from the court's order, or sought writ review or a stay in this court.[4]

On this same date, the North Seventh Street plaintiffs filed an action (LASC No. BC 386708) for declaratory and injunctive relief regarding City's alleged "illegal plan" both to demand and order a search and inspection of the premises at 1444, 1446, 1448, 1450, and 1458 South Alvarado Terrace, which North Seventh Street owned, including the apartment units of Sotelo and other tenants, "without an inspection warrant and without probable cause" and to demand North Seventh Street to participate in this

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[3] The order did not address the 1422 South Alvarado Terrace or the 233 North Avalon Boulevard property.

[4] The March 5, 2008 minutes do not indicate a formal order was to be prepared. On July 3, 2008, the trial court (J. Bruguera) directed Western States' counsel to prepare a proposed judgment. On August 7, 2008, the court (J. Bruguera) signed the judgment, which reflected the application was denied; City could proceed with the subject inspection warrants; and no stay was granted "because there are health and safety issues involved." We need not and therefore do not reach the issues of whether denial of an ex parte application to quash an inspection warrant is appealable; if so, whether the appeal must be taken from a formal signed order (judgment); and if a minute order suffices, whether the appeal is untimely. (See Code Civ. Proc. § 904.1; *Herrscher v. Herrscher* (1953) 41 Cal.2d 300, 304; *Gwinn v. Ryan* (1949) 33 Cal.2d 436, 437; *Cobb v. University of So. California* (1995) 32 Cal.App.4th 798, 801–802.)

illegal scheme.[5] They alleged "an illegal search and inspection is now imminent," because "City is now threatening immediately to procure ex parte and without any notice to Plaintiffs inspection warrants based on [unlawful] routine or area standards . . . as soon as possible." They sought a declaration that City could only inspect the subject property and units "upon issuance of an inspection warrant by the Superior Court based on probable cause to believe a non-conformity exists, with specific facts being stated . . . by the City" and "injunctive relief prohibiting City from applying for inspection warrants . . . based on routine or area inspection standards or entering, searching and inspecting the Property based on any such warrants."

Also on this date, the trial court (J. Yaffe) denied the ex parte application by North Seventh Street plaintiffs for a temporary restraining order and an order to show cause regarding a preliminary injunction.

On June 24, 2008, the trial court (J. Aragon) sustained City's demurrer to the complaint with leave to amend and discharged the order to show cause why LASC No. BS114526 should not be found related to BC386708. The court noted plaintiffs appeared to be seeking collaterally to challenge the March 5, 2008 order of another judge upholding inspection warrants; authorizing inspection of the subject premises; and denying a stay of the order. The court ruled that it would not reconsider the propriety of the inspection warrants issued, because their remedy was a "direct attack before" that judge. The court further declined plaintiffs' request to the extent they sought a judicial determination of the constitutionality of an inspection warrant not yet issued.

On July 18, 2008, a first amended complaint was filed. This complaint contained additional allegations regarding plaintiffs' expectation that City would make ex parte applications for inspection warrants on the subject property without notice and based on an improper standard.

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[5] In its case management statement filed July 2, 2008, City stated it was unaware of any formal complaint filed in LASC No. BS114526. No complaint is in the record.

At the September 26, 2008, demurrer hearing, Thomas Nitti, plaintiffs' counsel, conceded that he was not challenging the City's informal procedure of requesting a landlord to allow inspection of the rental property. Rather, his challenge was to the City's procedure of seeking an inspection warrant from the court when the landlord refused. The trial court (J. Aragon) stated there was no impropriety, because judicial review was all that plaintiffs were entitled to and issues regarding the propriety of the inspections sought would be filtered through such review. Mr. Nitti argued "[h]ere is the judicial review [available]: No notice. It's done ex parte. And the next thing my client gets is an order placed on his property: 'We're coming in in 24 hours.'" The trial court again found the judicial review procedure was proper. The court sustained the City's demurrer without leave to amend and entered an order (judgment) of dismissal.

DISCUSSION

Western States and the North Seventh Street plaintiffs contend, at a minimum, they are entitled to appellate review of either the judgment denying the motion to quash inspection warrants or the judgment dismissing the action seeking declaratory and injunctive relief regarding City's alleged improper procedure for seeking such warrants. They argue if this court were to dismiss Western States' appeal from the denial of its motions to quash as moot, and to affirm the judgment of dismissal after demurrer in the North Seventh Street plaintiffs' declaratory relief action as not justiciable they would be left without a means to challenge the propriety of any warrant issued allowing the City to access and search their properties. We disagree. When the lower court denied the ex parte application to quash inspection warrants and refused to issue a stay, Western States' recourse was to seek writ review and a stay. This same remedy is equally available to North Seventh Street plaintiffs. Once an inspection warrant is issued affecting their proprietary interests, they too may seek to quash that warrant and seek redress for any adverse ruling in the trial court by seeking writ review and requesting a stay during pendency of the review.

1. *Dismissal of Western States' Appeal as Moot*

City contends, and Western States concedes, the challenged inspection warrants issued on January 31, 2008 are no longer at issue, because they were either executed or expired by operation of law.[6]

"An inspection warrant is an order, in writing, in the name of the people, signed by a judge of a court of record, directed to a state or local official, commanding him to conduct any inspection required or authorized by state or local law or regulation relating to building, fire, safety, plumbing, electrical, health, labor, or zoning." (Code Civ. Proc., § 1822.50.)[7] Such a "warrant shall be effective for the time specified therein, but not for a period of more than 14 days, unless extended or renewed by the judge who signed and issued the original warrant, upon satisfying himself that such extension or renewal is in the public interest. Such inspection warrant must be executed and returned to the judge by whom it was issued within the time specified in the warrant or within the extended or renewed time. *After the expiration of such time, the warrant, unless executed, is void*." (§ 1822.55, italics added.)

Western States asserts that its appeal is not moot because a material question affecting the parties remains unresolved. It contends the continuing controversy here concerns the appropriate administrative probable cause standard, which it offers is "a reasonable belief that a violation has been or is being committed" as adopted in *Salwasser Manufacturing Co. v. Occupational Saf. & Health Appeals Bd.* (1989) 214 Cal.App.3d 625 (*Salwasser II*).

"If an action involves a matter of continuing public interest and the issue is likely to recur, a court *may* exercise an inherent discretion to resolve that issue, even though

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6 Neither side addresses the precise fate of these warrants, and the record is silent on the matter.

7 All further section references are to the Code of Civil Procedure unless otherwise indicated.

. . . the matter [is] moot." (*Liberty Mut. Ins. Co. v. Fales* (1973) 8 Cal.3d 712, 715–716, italics added.)

We decline to exercise our discretion to consider the issue because it can be properly raised when and if the situation Western States complains of reoccurs. The record contains no evidence indicating any new inspection warrants as to the subject properties have been issued since January 31, 2008.

2. *The Demurrer*

North Seventh Street plaintiffs contend the trial court should have overruled City's demurrer to its first amended complaint. They acknowledge that City need meet only the administrative, not the criminal, standard of probable cause for issuance of an inspection warrant and argue the actual controversy raised in the complaint is whether this standard requires "'the proposed inspection [be] based upon a reasonable belief that a violation has been or is being committed,'" citing to *Salwasser II*, *supra*, 214 Cal.App.3d 625, at pp. 630–631. This issue is not ripe for judicial resolution. The complaint fails to allege facts giving rise to an actual controversy.

a. *Applicable Legal Principles*

"On appeal from a judgment dismissing an action after sustaining a demurrer without leave to amend, the standard of review is well settled. We give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] Further, we treat the demurrer as admitting all material facts properly pleaded, but do not assume the truth of contentions, deductions or conclusions of law. [Citations.] When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.] And when it is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse. [Citation.]" (*City of Dinuba v. County of Tulare* (2007) 41 Cal.4th 859, 865.)

"[A] request for injunctive relief is not a cause of action. [Citation.] Therefore, we cannot let [such a] 'cause of action' stand." (*Shamsian v. Atlantic Richfield Co.* (2003) 107 Cal.App.4th 967, 984–985.)

"Any person . . . who desires a declaration of his . . . rights or duties with respect to another, or in respect to . . . property, . . . may, in cases of *actual controversy* relating to the legal rights and duties of the respective parties, bring an original action . . . in the superior court for a declaration of his . . . rights and duties in the premises." (§ 1060, italics added.) "'The "actual controversy" referred to . . . is one which admits of *definitive and conclusive relief* by judgment within the field of judicial administration, as distinguished from an *advisory opinion* upon a particular or hypothetical state of facts. The judgment must decree, not suggest, what the parties may or may not do. [Citations.]' [Citation.] '"A difference of opinion does not give rise to a justiciable case until an actual concrete controversy arises."' [Citation.]" (*BKHN, Inc. v. Department of Health Services* (1992) 3 Cal.App.4th 301, 308, italics added.)

b. *No Actual Controversy Alleged or Offered*

The first amended complaint does not allege any cognizable wrongful conduct on the part of City injurious to North Seventh Street plaintiffs. It merely alleges possible future conduct on the part of City that might be unlawful and speculates that such illegal conduct would receive the superior court's imprimatur. The complaint alleges: Pursuant to its illegal plan, custom, and practice, City sought the issuance of warrants based on improper "routine or area inspection standards," which absent "opposition, courts routinely issue . . . as requested. Since the wrong standards are used, the inspection warrants are illegal." Plaintiffs refused to allow City to search and inspect the units of Sotelo and "all other tenants without an inspection warrant and without probable cause to believe there was any condition of non-conformity therein." "Plaintiffs expect [City] to follow its custom and practice (which it has done in the past as to these Plaintiffs) and appear ex parte in this Superior Court, with no notice to the Plaintiffs, and seek an administrative warrant to inspect Plaintiffs' premises, without probable cause." The

complaint further alleges: "City is now threatening that if the inspections and searches as now scheduled for July 23, 2008 and July 29, 2008 are not allowed, it will immediately procure ex parte and without any notice to Plaintiffs inspection warrants based on routine or area standards (the improper standard) to enter, search and inspect the Property and the units thereon with the assistance of the [police]. [City] has done so several times to these Plaintiffs in the past." "Based on . . . City's threats, . . . City will thus seek warrants based on the improper routine or area standards any time after July 23, 2008."

In short, the alleged actionable wrongdoing is City's intent to make one or more ex parte applications for an inspection warrant based on an alleged improper standard. Plaintiffs cite no applicable argument with supporting authority for its proposition that the mere application for an administrative inspection warrant, even if based on the wrong standard, amounts to an actual controversy warranting judicial intervention. (*Do It Urself Moving & Storage, Inc. v. Brown, Leifer, Slatkin & Berns* (1992) 7 Cal.App.4th 27, 35 [point urged without supporting argument or authority deemed without foundation requiring no further discussion].)

Moreover, the fallacy of plaintiffs' position is the premise that the court passing on a City ex parte application would rubber stamp an unopposed inspection warrant without first ascertaining whether the requisite 24-hour statutory notice shall be given to the opposing party, namely, plaintiffs, and use an incorrect legal standard in issuing such a warrant. The law is otherwise.

"*If the judge is satisfied that the proper standard for issuance of the warrant has been met*, he or she shall issue the warrant particularly describing each place, dwelling, structure, premises, or vehicle to be inspected and designating on the warrant the purpose and limitations of the inspection, including the limitations required by this title." (§ 1822.54, italics added.) Moreover, in issuing the warrant, the judge must determine whether notice must be given before the warrant is executed. "[N]otice that a warrant has been issued must be given at least 24 hours before the warrant is executed, unless the

judge finds that immediate execution is reasonably necessary in the circumstances shown." (§ 1822.56.)

"[W]e do not presume a court would fail to perform [its] statutorily mandated duty." (*People v. Allegheny Casualty Co.* (2007) 41 Cal.4th 704, 718; see generally, Evid.Code, § 664.) "It is a basic presumption indulged in by reviewing courts that the trial court is presumed to have known and applied the correct statutory and case law in the exercise of its official duties. [Citations.]" (*People v. Mack* (1986) 178 Cal.App.3d 1026, 1032.)

Additionally, until an inspection warrant is sought, there is no way to determine whether the warrant will be based on a "routine or area" inspection or upon a specific complaint of nonconformity. "An inspection warrant shall be issued upon cause, unless some other provision of state or federal law makes another standard applicable. An inspection warrant shall be supported by an affidavit, particularly describing the place, dwelling, structure, premises, or vehicle to be inspected and the purpose for which the inspection is made. In addition, the affidavit shall contain either a statement that consent to inspect has been sought and refused or facts or circumstances reasonably justifying the failure to seek such consent." (§ 1822.51.) "Cause shall be deemed to exist if either reasonable legislative or administrative standards for conducting *a routine or area inspection* are satisfied with respect to the particular place, dwelling, structure, premises, or vehicle, or there is reason to believe that *a condition of nonconformity exists* with respect to the particular place, dwelling, structure, premises, or vehicle."[8] (§ 1822.52,

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[8] Sections 1822.50 through 1822.57 embody a legislative scheme to enable a public entity to implement its ordinances promoting health and safety. "While those sections are often used to authorize the so-called 'area' search, where a particular section of a city, containing many run-down and dilapidated buildings, exists, the statute, by its terms, also applies to 'routine' inspections based on reasonable standards." (*Currier v. City of Pasadena* (1975) 48 Cal.App.3d 810, 817. They were "enacted to comply with the standards enunciated in *Camara v. Municipal Court* [(1967)] 387 U.S. 523." (*People v. Tillery* (1989) 211 Cal.App.3d 1569, 1575.) *Camara* involved enforcement of a municipal housing code. The Supreme Court noted "[t]he primary governmental interest

italics added.) Moreover, it would be for the trial court in the first instance to determine whether the application for the warrant is supported. Thereafter, the proper means to challenge an erroneous decision by the trial court is to seek timely writ review.

The trial court thus correctly sustained City's demurrer to the first amended complaint. The court did not abuse its discretion in doing so without leave to amend in view of the failure of North Seventh Street plaintiffs to offer an amendment that would cure the defects and state an actual controversy amounting to a justiciable case.

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at stake is to prevent even the unintentional development of conditions which are hazardous to public health and safety." (387 U.S. at p. 535.) The court concluded an "area" inspection could be made on less than probable cause to believe that particular dwellings were the sites of particular violations and explained: "'Experience may show the need for periodic inspections of certain facilities without a further showing of cause to believe that substandard conditions dangerous to the public are being maintained. The passage of a certain period without inspection might of itself be sufficient in a given situation to justify the issuance of a warrant.'" (Id. at pp. 534–536, 538.)

"[U]nlike criminal search warrants, the probable cause for the issuance of an administrative inspection warrant is a finding of reasonable need, i.e., a finding of reasonable legislative or administrative standards for a periodic or area inspection or a reasonable belief by an inspector that a regulatory violation exists on the particular premises to be inspected. [Citations.]" (*People v. Tillery, supra*, 211 Cal.App.3d at p. 1575; cf. *Salwasser Manufacturing Co. v. Municipal Court* (1979) 94 Cal.App.3d 223 (*Salwasser I*) [holding criminal search warrant standards applicable to Cal-OSHA "routine" safety inspection of business premises]; but see *Salwasser II, supra*, 214 Cal.App.3d 625, 629, fn. 1 [noting "question regarding the continuing viability of *Salwasser I* following the enactment of Proposition 8"].)

DISPOSITION

Western States' appeal from the judgment (order) denying its ex parte application to quash inspection warrants (B211253) is dismissed as moot. The judgment dismissing the action of North Seventh Street plaintiffs (B211296) is affirmed. City shall recover its costs on these consolidated appeals.

NOT TO BE PUBLISHED.

ROTHSCHILD, J.

We concur:

MALLANO, P. J.

CHANEY, J.